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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

DEMILLE, DANTON D

ART UNIT PAPER NUMBER

3764

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/706,873

Applicant(s)

WALDRIDGE ET AL.

Examiner

Danton DeMille

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8, 12-15 and 25-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-15 is/are allowed.
- 6) ☒ Claim(s) 8 and 27-45 is/are rejected.
- 7) ☒ Claim(s) 25 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

2. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

3. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. **Claim 8 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,645,165.**

5. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to leave out details of the sequence beginning in the distal region and proceeding to the proximal region. The wrap and compartments being wrapped about the limbs of the patient would result in arcuate chambers and therefore comprehend the claim language.

6. **Claims 27-45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,645,165 in view of Rosett '242.**

7. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to leave out details of the sequence beginning in the distal region and proceeding to the proximal region. The step of activating and deactivating a

single chamber prior to activating another one of the plurality of inflatable chambers is taught by Rosett. The claims of the patent are not limited to any particular detail of inflation and Rosett provides such details. It would have been obvious to one of ordinary skill in the art to modify the patent to leave out the details of sequencing the chambers beginning with the distal region and proceeding to the proximal region and also to deactivate the first compartments prior to activating subsequent chambers as taught by Rosett to provide the details of inflating the compartments to create a pressure wave to move the body fluids into the different lymph node groups.

8. Claim 8 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,179,796 in view of Bullard.

9. It would have been obvious to one of ordinary skill in the art to modify the patent claims to sequence the inflation of the compartments in a distal to proximal and alternatively proximal to distal sequence as taught by Bullard to provide the details of operating sequence.

10. Claims 27-45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,179,796 in view of Rosett (US 2,361,242). It would have been obvious to one of ordinary skill in the art to modify the patent claims to deactivate the first compartments prior to activating subsequent chambers as taught by Rosett to provide the details of inflating the compartments to create a pressure wave to move the body fluids into the different lymph node groups.

Claim Objections

11. Claim 26 is objected to because of the following informalities: claim 26 recites the individually inflatable bladders as compartments however, later in the claim refers to them as a "chamber". Consistency is required at least for this claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. **Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bullard (US 4,865,020) in view of Alekseeva (SU 498943) or Rosett (US 2,361,242).**

14. Bullard teaches the method of body manipulation providing a wrap system adapted to fit about a body extremity including a trunk region 8 and limb regions 1-7. The plurality of compartments are selectively pressurized and depressurized in at least a first and second pressurization and depressurization sequence. One sequence starts with the distal limb region and proceeds to the trunk region, column 4, lines 51-60. Another sequence inflates the cuffs from the trunk toward the extremity, column 5, lines 6-10. This latter sequence would activate and deactivate a successive regions of the wrap system commencing with the proximal most region and ending with a distal most region. This would anticipate the method claimed.

15. The air compartments of Bullard appear to be curved since the compartments are wrapped about the body. The compartments are necessarily curved when they are wrapped around the body curving to conform to the shape of the body. If it is felt the circular

compartments of Bullard are not curved Alekseeva figure 2 shows a cross section of a wrap that shows the compartment within the wrap as being curved.

16. It is not clear if the wrap of Bullard comprehends the claimed wrap. The wrap of Bullard is adapted to fit a plurality of compartments about the body extremity that are contiguously joined together. Each of the compartments are selectively and sequentially pressurized. It is not clear if the plurality of cuffs 1-7 comprise a “wrap”. To any extent it is felt that the wrap of Bullard is not a wrap then both Alekseeva and Rosett are cited to teach wrap systems wherein the plurality of compartments are joined together to form a unitary “wrap” can be fit about the body of the patient so that one does not have to fit each and every one of the compartments one at a time.

17. Alekseeva teaches a suit which clearly wraps around the body limbs and trunk. The suit includes a plurality of compartments selectively pressurized. Rosett also teaches a wrap that includes a trunk region and limb regions including a plurality of selectively pressurized compartments. Both of these references teach the advantage of being able to wrap a plurality of pressurized compartments about the body using a single unitary wrap so that one doesn't have to wrap each individual compartment about the body. There appears to be no unobviousness to have the plurality of compartments formed as a wrap as taught by both Alekseeva and Rosett.

18. The overall method of providing a wrap with a plurality of compartments for the function of sequentially pressurizing and depressurizing select regions of the body in first and second sequences is taught by Bullard. There appears to be no criticality to the details of how the wrap is made.

19. To any extent it is not felt the wrap of Bullard is not a wrap, it would have been obvious to one of ordinary skill in the art to modify Bullard to form the plurality of compartments as a

wrap as taught by either Alekseeva or Rosett so that the plurality of compartments are more easily placed about the body. It also would have been obvious, if not inherent in Bullard, to shape the compartments to be curved as taught by Alekseeva so that the wrap better conforms to the shape of the body.

20. Claims 27-33, 36-41, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosett '242 in view of Tobler et al.

21. Rosett teaches a garment for securing a plurality of inflatable chambers that are selectively pressurized. Page 4, lines 12-19, column 1, Rosett teaches "bags number 1 on both of the legs of the patient, both of the arms of the patient, and on the torso of the patient, are inflated simultaneously. Immediately afterwards, all number 2 bags in the arms, legs and torso sections are inflated and all of the number 1 bags in these sections are subjected to the suction pressure of the pump and rapidly deflated." Therefore, Rosett teaches the claimed activating a single chamber and subsequently deactivating said single chamber prior to activating another one of the plurality of chambers such as number 3 bags. The number 1 bags are in the distal portion of the group of chambers in the limbs and progress toward and beyond a first lymph node area located in the knee and elbow region and continue in the proximal direction to a second lymph node group in the groin and arm pit area. The pressure applied to the fluids within the limbs would also continue into the rest of the body to other lymph node groups. Lymph from the legs would be forced up to the groin area which then by the action of the chambers in the trunk area would be forced toward the arm pit.

22. If it is felt the compartments of Rosett are not curved as they are applied to the curved shaped body, Tobler is cited to show chambers that are curved to better conform to the curved shape of the body. It would have been obvious to one of ordinary skill in the art to modify

Rosett to curve the chambers as taught by Tobler to shape the chambers to better conform to the curved shape of the body.

23. Claims 34, 35, 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 27 above, and further in view of Taheri.

24. Taheri teaches applying chambers down the feet and toe level of the body. While Rosett may not show the chambers getting down the toe and finger level of the body such would have been obvious in view of Taheri. It would have been obvious to one of ordinary skill in the art to further modify Rosett to include chambers for the fingers and toes as suggested by Taheri to include the fingers and toes that also collect waste products that need to be moved and drained from the body.

Allowable Subject Matter

25. Claims 12-15 are allowable over prior art to which the examiner is aware.

26. Claim 25 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

27. Claim 26 would be allowable if rewritten or amended to overcome the claim objections, set forth in this Office action.

Response to Arguments

28. Applicant's arguments with respect to claims 8, 27-45 have been considered but are moot in view of the new ground(s) of rejection.

29. Applicant argues that the prior art does not teach the claimed method of inflation wherein a first sequence occurs proximally to distally **by region** and within each select region proceeds distally to proximally by compartment. It is not clear how much weight can be given this

argument since claims 8 and 27-45 are not so limited. Applicant's arguments are not commensurate in scope with the claims. The prior art doesn't have to show this method because the claims don't require it.

30. Claim 8 merely claims the method of inflation commencing with the proximal region and ending with the distal most region. That describes a method that most of the prior art in the area teach. Most all of the prior art teach beginning in the distal most region and ending in the proximal most region for typical movement of body fluids back to the center of the body.

31. Claim 27 is merely describing that subsequent to the activation of one chamber, the chamber is deflated prior to activating another. This too is well known as exemplified by the 1925 patent to Rosett.

Conclusion


32. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

33. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-Th from 8:30 to 6:00. The examiner can also be reached on alternate Fridays.

35. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

36. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Danton DeMille
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